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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 148

OWENS GENERATOR COMPANY, INC., a defunct New Jersey corporation; et al.,
Petitioners,

vs.

H. J. HEINZ COMPANY, a Pennsylvania corporation,
Respondent.

Brief for Respondent in Opposition to Petition for Writ of Certiorari

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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 1119

OWENS GENERATOR COMPANY, INC., a defunct New Jersey corporation; et al.,
Petitioners,
vs.
H. J. HEINZ COMPANY, a Pennsylvania corporation,
Respondent.

Brief for Respondent in Opposition to Petition for Writ of Certiorari

OPINIONS BELOW

The opinion of the Court of Appeals is reported in 314 F.2d 66 and appears as Appendices A-1 and A-4, pp. 1, 7, of the petition. The unreported opinion of the District Court appears as Appendix C to the petition (Pet. App. p. 29).

JURISDICTION

Jurisdiction of the District Court was invoked solely on diversity of citizenship (28 U.S.C. § 1332). Jurisdiction of this Court is

invoked under 28 U.S.C. § 1254(1) following review by the Court of Appeals under 28 U.S.C. § 1291.

QUESTIONS PRESENTED

No question such as is stated in the petition is presented. The closest one can come to a full faith and credit question is this:

When the Court of Appeals and the District Court fully recognize a state court judgment but construe it as not conceivably supporting a plaintiff's claim, does that present any question of denial of full faith and credit or warrant this Court's review?

STATEMENT OF THE CASE

In 1938 Charles Owens, the patentee of a vinegar generator, gave to petitioner Owens Generator Company (hereafter called Generator Company) an exclusive license "for so long as said [Generator Company] shall continue in business".[1]

In 1941 Generator Company was enjoined at the suit of the Attorney General of New Jersey, the state of its incorporation, from transacting any business, and in 1943 its charter was revoked by the Governor of New Jersey,[2] and it thereby ceased to have any interest in the patent or any improvement patent. Both courts below so concluded.[3]

In 1940, while the license to Generator Company still existed, that company installed one generator in a plant of respondent H. J. Heinz Company. Heinz claimed that a settlement of a resulting dispute included an oral agreement by Generator Company to give or obtain for Heinz a license to build more generators (R. 102, 142). In 1941 Mr. Owens gave Heinz such a written license which Heinz claimed was in fulfillment of the alleged agreement of Generator Company.

1. Pet. App. C, pp. 29, 30.
2. Pet. App. C, p. 32.
3. Pet. App. C, p. 29 at 32; Pet. App. A-1, p. 4.

In November 1943 Mr. Owens sued Heinz in a California state court for rescission of this license as wrongfully obtained and for a declaration that there was no agreement of Generator Company to give or get for Heinz the general license it claimed. The Generator Company was joined as a plaintiff because of its interest in obtaining such a declaration (R. 351). The complaint alleged that the Generator Company had been a licensee in 1940 and 1941 but that Mr. Owens "now is the owner and holder" of the patent (R. 23), and *that an injunction against Heinz was sought to protect Mr. Owens' right to utilize the patent in any way he saw fit for his benefit* (R. 29). The various contentions of the parties were placed in issue (R. 24, 25, 227, 233, 234, 243). The state court found that Generator Company had made no such oral agreement as Heinz claimed (R. 221), that Mr. Owens was the owner of the patent (R. 208), and that Generator Company *had been* a licensee in 1940 and 1941 (R. 209).

In 1944 the state court gave judgment cancelling Mr. Owens' 1941 license to Heinz, granting the declaration sought, and enjoining Heinz from asserting a right to build generators of the kind covered by Mr. Owens' patent (R. 34). Heinz did not appeal.

In 1949, Mr. Owens solely on his own behalf instituted contempt proceedings against Heinz in the state court for alleged violation of the 1944 injunction (R. 17, 79, 171). The court held Heinz guilty of contempt in an interlocutory order stating that the license from Mr. Owens to Generator Company had terminated before the contempts were committed (R. 38, 43, 48-9). It thereafter ordered Heinz to pay large damages to Mr. Owens and to destroy its vinegar generators (R. 62, 64, 65). That order was annulled by a California intermediate appellate court (*H. J. Heinz Co. v. Superior Court*, 252 P.2d 402) but was partially reinstated by the California Supreme Court (*H. J. Heinz Co. v. Superior Court*, 42 Cal. 2d 164, 266 P.2d 5).

In May 1954 further proceedings in the contempt litigation ended in a settlement between Heinz and Mr. Owens, by which

Heinz paid Mr. Owens a cash sum, obtained from him an assignment of his patent rights and a release of all his claims, and obtained a discharge of the contempt proceedings and a dissolution by the state court of the injunctive provisions of its 1944 judgment[4] (R. 173, 264, 268, 419-28).

In June, 1957, the former associates of Mr. Owens in the Generator Company, after lying inert for over 14 years after its charter had been revoked by New Jersey, despite knowledge of Owens' litigation with Heinz, filed the instant suit against Owens, Owens' attorney, and Heinz, claiming rights in the settlement proceeds and in the patents. That suit still pends against Mr. Owens on petitioners' claim of equities between them.[5] But both courts below concurred that Heinz had no notice of such equities, if they exist.

PETITIONERS' CONTENTIONS AND THE DECISIONS BELOW

The District Court entered a judgment of dismissal in favor of Heinz (R. 316).

Petitioners' principal contention in the District Court was that the 1938 license from Owens to Generator Company had never terminated. They do not now question the adverse conclusion of both courts below on that point based on the terms of the 1938 license. Heinz asserted in the District Court an additional defense that the 1944 state court judgment was *res judicata* that Generator Company had no interest in the patents. Petitioners' response was that the judgment was *not res judicata* of *any* rights as between Generator Company and Heinz—*a contention exactly opposite to the sole contention now presented to this Court.* In the Court of Appeals petitioners performed a *volte-face*, adopted Heinz's argument that the 1944 judgment was *res judicata* but claimed

4. Every California court has the intrinsic power and jurisdiction to vacate its own injunctions at any time for any reason and on its own motion. *Sontag Chain Stores Co. v. Superior Court*, 18 Cal. 2d 92, 95, 113 P 2d 689.

5. Pet. App. A-1, p. 2; Pet. App. C, p. 34.

that it was *res judicata* that Generator Company did have an interest in the patents. This contention petitioners based on an argument that since Generator Company and Owens had been co-plaintiffs in the suit culminating in the 1944 judgment, and since the recitals of the judgment stated that the "plaintiffs" were entitled to the decree being rendered, there was an implicit adjudication that the Generator Company still had rights in the patent, contrary to the facts.

The Court of Appeals found this argument to be without merit because "Any interest the corporation [Generator Company] may have had in the injunction would seem to us to attach only to that decree's declaration that the parties (including the corporation) were not bound to Heinz by any agreement granting rights to build generators".[6]

Petitioners told the Court of Appeals at the argument that they sought no further trial or proceedings in the District Court, that the only alternatives were to affirm or to reverse with directions to enter final judgment in favor of petitioners. The court affirmed.[7]

ARGUMENT

Not until their petition for a rehearing in the Court of Appeals did petitioners so much as intimate that any issue of full faith and credit was involved in this case.[8] The contention therefore comes too late. *Louisville & Nashville R.R. Co. v. Melton*, 218 U.S. 36, 51.

In fact the case does not involve any question of denial of full faith and credit to a state court judgment. It involves only a construction of that judgment. In both courts below Heinz recog-

6. Opinion as modified on rehearing, Pet. App. A-1, p. 2, and App. A-4, p. 7.

7. Pet. App. A-2, pp. 2, 3.

8. Pet. App. A-3, p. 3.

nized that the 1944 state judgment was binding for whatever it held and contended that it was *res judicata* against petitioners.[9] In the District Court petitioners argued that that judgment was *res judicata* of *no* issue here. Their present position is a complete about face.

The Court of Appeals did not refuse to honor and apply the state judgment. What it did was to examine the judgment, construe it, determine what it held, and conclude that petitioners' construction was frivolous. Indeed, the state court that rendered the judgment interpreted it in the subsequent contempt proceedings as holding that Mr. Owens was the "sole owner . . . of said letters patent" (R. 38). So did the Supreme Court of California. *H. J. Heinz Co. v. Superior Court*, 42 Cal. 2d 164 at 166, 266 P.2d 5 at 6, 7.

Construction by a court of a statute or a judgment of another court, without questioning its validity, does not deny to that statute or judgment the full faith and credit demanded by 28 U.S.C. § 1738. *Allen v. Alleghany Company*, 196 U.S. 458, 464-465. The fact that a construction of a judgment does not support a litigant is not a denial of full faith and credit and raises no federal question. *Johnson v. New York Life Insurance Co.*, 187 U.S. 491; *Louisville & Nashville R.R. Co. v. Melton*, 218 U.S. 36; *Smithsonian Institute v. St. John*, 214 U.S. 19, 29. Otherwise, this Court would be called on to review every construction by a lower court of a judgment of another court. The distinction between construction and validity "has frequently been adverted to by this Court". *Glenn v. Garth*, 147 U.S. 360, 369; *Banholzer v. New York Life Ins. Co.*, 178 U.S. 402.

Petitioners are simply unsuccessful parties who ask this Court to give them "another hearing" on a question wholly peculiar to this case, the construction of a particular judgment rendered in the context of its own pleadings, proceedings and facts of no

9. Pet. App. C., p. 29 at 33, 34.

interest to anyone but the litigants. As this Court has often said, it does not exercise its certiorari jurisdiction to such an end. *National Labor Relations Board v. Pittsburgh S. S. Co.*, 340 U.S. 498, 503; *General Talking Pictures Corp. v. Western Electric Co.*, 304 U.S. 175, 178; *Magnum Import Co., Inc. v. Coty*, 262 U.S. 159, 163-164.

Moreover, adoption of petitioner's construction of the 1944 state judgment could not lead to a different disposition of the case, because petitioners formally admitted that at no time after receipt of a certain letter from Mr. Owens in March 1945 did Generator Company "engage in any business or purport to carry on or continue in business" (R. 101, 141). Thus under its terms (p. 2 supra) the license from Owens to Generator Company would have ceased then even if the prior judgment were deemed to have held that it was still in effect at the date of that judgment. Furthermore, the statutory 17 year life of the patent had ended several years before the instant suit was brought, so that there was no "res" in Heinz's hands on which to impress a trust. Other defects in petitioner's case also exist (See, e.g., Pet. App. C, p. 35).

CONCLUSION

It is respectfully submitted that the petition should be denied.

Dated: San Francisco, California, June 13, 1963.

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